

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.4

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules in accordance with House Bill 427, enacted by the 2003 Montana Legislature, and to allow the Department to provide notices of decisions on air quality permits by mail rather than by personal service.

List of Affected Rules: This rulemaking would amend ARM 17.8.749, 17.8.759, 17.8.763 and 17.8.764.

Affected Parties Summary: The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments, and take testimony on inclusion of the rule amendments in the State Implementation Plan (SIP).

Background: HB 427 requires the Board to adopt rules providing a 30-day public comment period for draft air quality permits for applications that are: subject to the federal air permitting provisions of 42 USC 7475 (attainment area major new source review), 7503 (nonattainment area major new source review), or 7661 (Title V operating permits for major sources); subject to the incinerator permitting provisions of Section 75-2-215, MCA; or that require preparation of an EIS. Based on the prior 60-day statutory timeline for the Department's decision on all air quality permit applications except those requiring preparation of an environmental impact statement (EIS), ARM 17.8.759(4)(b) now provides for a 15-day public comment period. The proposed amendments to ARM 17.8.759(4)(b) would implement the requirement in HB 427 to extend the public comment period from 15 days to 30 days for applications for permits for major sources, major modifications, and incinerators and applications that require preparation of an EIS.

HB 427 also extended from 60 days to 75 days the timeline for the Department to notify the applicant for an air quality permit of approval or denial of the application if the application does not require preparation of an EIS and the application is subject to: the federal air permitting provisions of 42 USC 7475, 7503, or 7661; or the incinerator permitting provisions of Section 75-2-215, MCA. (HB 427 does not affect the timeline for notification when the owner or operator also is required to obtain a solid waste management system license or hazardous waste management facility permit.) The proposed amendments to ARM 17.8.759(4)(c) would implement the extended timeline under HB 427 for the Department's decision on applications for permits for major sources, major modifications, and incinerators.

Under the existing ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3), the Department is required to follow the Montana Rules of Civil Procedure in serving notice of the Department's decision to deny an application for an air quality permit, revoke a permit, or make an administrative amendment to a permit. Rule 4(D)(1) of the Montana Rules of Civil Procedure requires personal service by a sheriff, deputy sheriff, constable, or other person over the age of 18. Personal service of the Department's decision to approve or deny a permit application or to revoke or amend a permit is not necessary. The proposed amendments to ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3) would allow the Department to provide these notices by mail.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP. These amendments would be submitted to EPA as a SIP revision.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the enclosed proposed Montana Administrative Register notice.

Enclosures:

1. Proposed Notice of Public Hearing on Proposed Amendment.